

CHAPTER 6. CAPTIVE INSURANCE

INFORMAL DRAFT

9. TEXT (All text is new text and would be underlined in a formal proposal)

SUBCHAPTER A. GENERAL MATTERS

§6.1. Definitions.

(a) The definitions in Insurance Code §964.001 apply to this chapter.

(b) The following words and terms when used in this chapter will have the following meanings unless the context clearly indicates otherwise:

(1) Administrative services--Insurance-related services necessary for the operation of a captive insurance company, including: claims adjustment; underwriting; accounting; regulatory compliance; compiling statistics and preparing premium, loss, and tax reports; maintaining books and records; handling reinsurance matters; and processing premiums.

(2) Annual report--The annual report includes the following information, as required in the Texas Captive Annual Report Form and instructions adopted under §6.401 of this title (relating to Annual Report):

(A) the captive insurance company's financial statements, including disclosures and supporting schedules;

(B) an actuarial opinion completed by a qualified actuary that provides an opinion relating to policy reserves and other actuarial items for risks insured;

(C) a management discussion and analysis;

(D) financial projections covering the next three years; and

(E) the audited financial statements of the ultimate controlling person for the same reporting year as the captive insurance company's financial statements.

(3) Captive management company--A legal entity, not an individual, that provides any administrative services to a captive insurance company.

(4) Governing body--The ultimate decision-making body of a captive insurance company based on the entity's organizational structure; for example, the company's board of directors.

(5) Licensed attorney--A person licensed and eligible to practice law.

(6) Person--An individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, or similar entity, or a combination of entities acting in concert.

(7) Service providers--Captive management companies that provide administrative services and individuals or entities providing legal, actuarial, or auditing services.

(8) Qualified accountant--An independent certified public accountant or accounting firm that meets the requirements of Insurance Code §401.011.

(9) Qualified actuary--A person who meets the basic education, experience, and continuing education requirements as set forth in the Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States, promulgated by the American Academy of Actuaries, and is either:

(A) a member of the American Academy of Actuaries who has demonstrated actuarial competence to the satisfaction of the commissioner; or

(B) a member of the Casualty Actuarial Society.

(10) Texas Captive Annual Report Form--The forms, instructions, and requirements adopted by reference in §6.401 of this title (relating to Annual Report) that are necessary for completing the annual report and other submissions under this chapter.

(11) Ultimate controlling person--Person who controls a captive insurance company and who is not controlled by another person.

§6.2. Biographical Affidavits.

(a) Biographical affidavits provided by individuals under §6.103 and §6.303 of this title (relating to Designated Responsible Party and Captive Insurance Company Biographical Information) must include the following information and disclosures:

(1) the affiant's current name and any names the individual may have used in the past, social security number, date of birth, place of birth, and current mailing addresses, phone numbers, email addresses;

(2) the name and addresses of either the captive insurance company or captive management company, as appropriate;

(3) the affiant's position or title at either the captive insurance company or captive management company, as appropriate;

(4) information regarding the affiant's education, memberships in professional organizations, and any professional, occupational, or vocational licenses held;

(5) 10 years of the affiant's employment history; and

(6) the affiant's fidelity bond coverage history, criminal history, ownership or control of entities involved in the business of insurance.

(b) The captive management company must submit biographical affidavit to the department in a format that is acceptable to the department. The department may provide a form that the affiant may use to comply with this section.

§6.3. Submissions and Notifications to the Commissioner and Department.

Except as otherwise provided in this chapter or the Texas Captive Annual Report Form, all submissions to the commissioner or the department referenced in this chapter must be sent:

(1) electronically, to Captives@tdi.texas.gov;

(2) by hand delivery, to Captives, Texas Department of Insurance, 333 Guadalupe, Austin, TX 78701; or

(3) by mail, to Captives, Texas Department of Insurance, P.O. Box 149104, Austin, TX 78714.

SUBCHAPTER B. CAPTIVE MANAGEMENT COMPANIES

§6.101. Registration of Captive Management Companies.

(a) A captive management company may not provide captive management services to a captive insurance company prior to obtaining the commissioner's written approval of its registration as a captive management company.

(b) Unless the individual is an employee of the captive insurance company, an individual may not provide administrative services or be registered to provide such services.

(c) To register as a captive management company, the entity must submit the following information to the department in manner that is acceptable to the department:

(1) the name of the entity;

(2) the entity's federal employer identification number;

(3) information regarding the location and means of contacting the entity;

and

(4) the name of a responsible party, who qualifies under §6.103 of this title (relating to Designated Responsible Party), and who will be the contact for the department.

(d) The department may provide a form the registrant may use to comply with this section.

§6.102. Maintenance and Duration of the Registration.

(a) The captive management company's registration will expire if the captive management company does not provide management services to at least one Texas domestic captive insurance company for a period of more than 30 days.

(b) The captive management company must notify the department of changes to the information required for registration not later than 30 days after the change.

(c) If a captive management company's registration expires, the captive management company must submit a new registration to the department, which must be approved in writing by the commissioner before the entity can act as a captive management company. The captive management company may submit a written request for the commissioner to waive any portion of the registration requirement under this section. At the commissioner's sole discretion, the commissioner may grant the waiver in writing, if the commissioner determines that the requirement or information is not applicable or provides no additional value in reviewing the registration submission.

§6.103. Designated Responsible Party. A designated responsible party must:

- (1) be an individual;
- (2) have adequate and relevant experience in providing administrative services to captive insurance companies;
- (3) complete a biographical affidavit as required in §6.2 of this title (relating to Biographical Affidavits);
- (4) submit fingerprints as required in §1.503 and §1.504 of this title (relating to Application of Fingerprint Requirement and Fingerprint Requirement);
- (5) be eligible for licensure based on the guidelines established in §1.502 of this title (relating to Licensing Persons with Criminal Backgrounds).

§6.104. Administrative Services.

(a) A captive insurance company through its governing body may retain one or more captive management companies registered under this chapter to provide administrative services and implement the governing body's policies.

(b) One captive management company may oversee the administrative services provided by another captive management company.

(c) The captive insurance company must be party to any agreement under which a captive management company is providing administrative services to the captive insurance company, either directly or through another captive management company.

(d) The captive insurance company retains ultimate accountability and responsibility for compliance with all statutory and regulatory requirements. The captive insurance company may not enter into an agreement with a captive management company or other person that in any way limits, or may be construed to limit, the captive insurance company's ultimate accountability and responsibility for compliance with all statutory and regulatory requirements.

(e) Subsection (d) of this section does not limit the captive management company's obligations under any contract or the captive management company's duty to comply with all statutory and regulatory requirements.

(f) If an administrative service requires a license or certificate of authority under the Insurance Code or other law, a captive management company must have the required license or certificate of authority to provide the service.

§6.105. Agreements to Provide Administrative Services.

(a) An agreement between a captive insurance company and a captive management company described in §6.104(c) of this title (relating to Administrative Services), must be in writing and include the following:

(1) a requirement that all parties to the agreement must comply with the applicable requirements of the Insurance Code and department rules, including holding the appropriate licenses or certificates of authority;

(2) a requirement that the captive management company must permit the commissioner or the captive insurance company to examine at any time:

(A) the financial solvency of the captive management company;

and

(B) the captive management company's ability to perform its responsibilities under the written agreement;

(3) a description of the duties or services that the captive management company is to provide and all applicable instructions related to the performance of those services, including, for example, instructions on claims handling practices or procedures;

(4) a provision relating to continuity of services, including run off fee schedules and the transfer of the books and records of a captive insurance company from one captive management company to another captive management company;

(5) a requirement that the books and records of the captive insurance company:

(A) remain the property of the captive insurance company at all times;

(B) are available to the captive insurance company or its designee at any time while in the custody of a captive management company; and

(C) will be timely transferred to the captive insurance company or its designee:

- (i) upon request of the captive insurance company;
- (ii) at the termination or cancellation of a written agreement entered into by a captive management company; and
- (iii) in compliance with all applicable statutory and rule requirements;

(6) a requirement that the books and records must be maintained as required in §6.305 of this title (relating to Books and Records); and

(7) specify that the captive management company has no automatic right to terminate the agreement if the captive insurance company insurer is placed in receivership under Insurance Code Chapter 443.

(b) Under this chapter, a written agreement includes an agreement that is prepared, signed, or stored electronically.

SUBCHAPTER C. CAPTIVE INSURANCE COMPANY APPLICATION

§6.201. Captive Insurance Company Certificate of Authority Required.

(a) An entity may not act as a captive insurance company prior to obtaining a certificate of authority from the commissioner.

(b) A person seeking a certificate of authority to act as a captive insurance company must submit an application in a format acceptable to the department and

provide the information required in §6.202 of this title (relating to Captive Insurance Company Application Contents).

(c) The department may provide forms that an applicant may use for submitting its application.

(d) Prior to submitting an application or establishing an entity as a captive insurance company, a person may contact the department to review the requirements for a captive insurance company and the person's plans and documentation for establishing a captive insurance company.

§6.202. Captive Insurance Company Application Contents.

(a) An applicant seeking to redomesticate an existing captive insurance company or forming a new captive insurance company must provide the following information to the department:

(1) the name of the entity, the entity's federal employer identification number, and the location and means of contacting the entity;

(2) the location of the books and records;

(3) the registered agent for service;

(4) a list of the service providers that the captive insurance company will use, including qualified accountants, qualified actuaries, and licensed attorneys;

(5) biographical affidavits for the individuals described in §6.303(a) of this title (relating to Captive Insurance Company Biographical Information) who provide necessary functions to operate and govern the captive insurance company;

(6) the name of the ultimate controlling person;

- 226 (7) organizational documents for the captive insurance company;
- 227 (8) a description of how the captive insurance company fits into the
- 228 affiliated group's risk management plan and the group's significant operations in the
- 229 State of Texas;
- 230 (9) if the application is for the redomestication of a captive insurance
- 231 company, information listed in subsection (b) of this section;
- 232 (10) if the applicant proposes to insure controlled unaffiliated business,
- 233 the information listed in subsection (c) of this section;
- 234 (11) a certificate of formation or redomestication from the Texas
- 235 Secretary of State indicating that the entity has been formed for the purpose of
- 236 providing captive insurance;
- 237 (12) an affidavit satisfactory to the commissioner from the incorporators,
- 238 organizers, or officers of the captive insurance company stating that:
- 239 (A) the capital and surplus are the bona fide property of the
- 240 company; and
- 241 (B) the certificate of formation is true and correct;
- 242 (13) if necessary, an affidavit by the incorporators, organizers, or officers
- 243 of the captive insurance company stating:
- 244 (A) the number of shares or other type of equity instrument without
- 245 par value that are subscribed; and
- 246 (B) the actual consideration received by the captive insurance
- 247 company for those shares or other type of equity instrument;
- 248 (14) a plan of operation, including:

249 (A) the asset page; liability, capital, and surplus page; income
250 statement page; and cash flow page for the applicant from the Texas Captive Annual
251 Report Form that are certified by two principal officers who have submitted biographical
252 affidavits and:

253 (i) must contain three years of projected future operational
254 results, including a disclosure of the assumptions the applicant is using to develop the
255 projected financial statement; and

256 (ii) if applicable, the most recent three years of operational
257 results, in United States dollars; however, if the applicant has not been in operation for
258 three or more years, the applicant must submit operational results, in United States
259 dollars, for each year it has been in operation.

260 (B) description of the lines of business and perils that are proposed
261 to be covered including the limits of coverage;

262 (C) list of the affiliates that the applicant proposes to insure;

263 (D) description of the reinsurance programs proposed including the
264 lines of business that are affected, limits of reinsurance coverage, and the
265 counterparties that will be involved;

266 (E) an organizational chart listing all affiliates of the applicant's
267 affiliated group;

268 (F) agreements with any captive management companies the
269 applicant proposes to use;

270 (G) a copy of the applicant's investment strategy;

(H) an explanation of how the applicant intends to handle profits, including a statement about how dividends will be evaluated;

(I) an independent actuarial report that evaluates the feasibility of the applicant's plan of operation;

(J) a market analysis that includes a description of other alternatives that were evaluated and changes in economic conditions, market conditions, and political environments that would impact the captive insurance company's ability to meet its intended objectives;

(K) details of how the parent will maintain and support the captive insurance company including ensuring compliance with Texas statutes and rules; and

(L) evidence of the financial wherewithal of the parent company to retain the risk within the affiliate group using the captive, including the audited financial statements of the ultimate controlling person that have been prepared within the twelve month period preceding the date of the application;

(b) An application for a redomestication must include:

(1) the current domicile jurisdiction;

(2) the date of last examination;

(3) a copy of the most recent examination report, and

(4) information required in §6.406 and §6.407 of this title (relating to Loans to Affiliates and Letters of Credit) for existing loans to affiliates.

(c) If the applicant proposes to insure controlled unaffiliated business, the following documentation must be provided with the application:

(1) copies of the agreement(s) that evidence an existing contractual relationship between parties, one of which must be a captive insurance company affiliate;

(2) a description and any supporting documentation that evidences the captive insurance company affiliate bears the risk of a potential financial loss associated with the contract beyond the affiliate having to pay a fee.

(3) A description and any supporting policies that document that a captive insurance company affiliate controls the risk management function of the controlled unaffiliated business.

(d) The department may accept similar information prepared in a similar format for a non-affiliated third party, including a regulator, bank, or similar user, to the extent that the information satisfies one or more of the requirements in subsections (a) – (c) of this section to the satisfaction of the commissioner.

(e) The captive insurance company applicant may submit a written request for the commissioner to waive any portion of the application or information required under this section. At the commissioner's sole discretion, the commissioner may grant the waiver in writing, if the commissioner determines the requirement or information is not applicable or provides no additional value in reviewing the application.

SUBCHAPTER D. MAINTENANCE OF CAPTIVE INSURANCE COMPANY'S CERTIFICATE OF AUTHORITY

§6.301. Ongoing Requirements.

(a) To maintain its certificate of authority, a captive insurance company must comply with Insurance Code Chapter 964 and this chapter, including:

(1) providing biographical information as required under §6.303 of this title (relating to Captive Insurance Company Biographical Information);

(2) writing an annual premium amount of at least \$100,000;

(3) having an affiliate or ultimate controlling person with the financial wherewithal to continue placing the risk in the captive insurance company;

(4) complying with §6.305 and §7.1403 of this title (relating to Books and Records and Service on Domestic Insurance Companies Licensed by the State Board of Insurance and on Related Entities Authorized To Conduct Business in Texas);

(5) submitting annual reports and audited financial statements as described in §§6.401, 6.403, and 6.404 of this title (relating to Annual Report, Audited Financial Statements, and Captive Insurance Companies Using Other than Calendar Year Fiscal Years), and;

(6) notifying the department of any material change in the captive insurance company's plan of operation, as described in §6.304 of this title (relating to Material Change in the Plan of Operations).

(7) except as provided in paragraph (6) of this subsection, notifying the department of any change to the information provided in the application within 30 days following the change.

(b) The department will look solely to the captive insurance company's governing body for managerial control, insurance information, and compliance with the Insurance Code and department rules.

(c) The department will reassess the captive insurance company's minimum capital and surplus when there is an update to the captive insurance company's plan of operations or projections.

§6.302. Governing Body.

(a) Collectively, the members of the governing body must have the skills, experience, and knowledge necessary to oversee the captive insurance company's operations. The skills, experience, and knowledge needed will vary with the size and complexity of the captive insurance company's operations.

(b) The governing body is responsible for the following:

(1) establishing and documenting the internal control procedures used by the captive insurance company; if a captive insurance company uses an affiliate's procedures, the governing body must review the procedures for appropriateness and modify where needed.

(2) documenting a conflict of interest policy and procedure, and monitoring it to verify compliance;

(3) overseeing all entities providing captive management services to the captive insurance company, including reviewing and entering into a written agreement with each service provider that defines the responsibilities of the service provider;

(4) monitoring counterparty risk, which could include banking institutions and reinsurers; and

(5) setting the captive insurance company investment policy.

§6.303. Captive Insurance Company Biographical Information.

(a) With the initial captive insurance company application, and within 30 days of employment, contract, or other association with the captive insurance company, the following individuals must complete a biographical affidavit that must be submitted to the department:

(1) individuals who oversee the management of the captive insurance company, including the following functions, must complete a biographical affidavit:

(A) risk management;

(B) financial reporting;

(C) underwriting;

(D) claims; and

(E) investments;

(2) members of the governing body; and

(3) corporate officers.

(b) The captive insurance company must notify the department of any changes in the information contained in the biographical affidavit within 30 days of the change.

§6.304. Material Change in the Plan of Operations.

(a) A material change in the plan of operations involves a change in operations of the captive insurance company that results in a significant modification in the risk profile of the captive insurance company, including:

(1) adding one or more new lines of business or perils;

(2) modifying policy limit(s) or policy coverage(s);

- 384 (3) changing captive management companies;
- 385 (4) the sale of an insured affiliate, regardless of the amount of business
386 insured from that affiliate;
- 387 (5) entering into new reinsurance programs including loss portfolio
388 transfers;
- 389 (6) modifying reinsurance programs, including:
- 390 (A) changing counterparties;
- 391 (B) changing the attachment point or amount of business ceded or
392 assumed; and
- 393 (C) changing limits of coverage;
- 394 (7) changing the captive insurance company's ultimate controlling person;
- 395 (8) any changes to the information associated with controlled unaffiliated
396 business submitted in §6.202(e) of this title (relating to Captive Insurance Company
397 Application Contents); and
- 398 (9) entering into a runoff mode or eliminating one or more lines of
399 business or perils, including winding up operations.
- 400 (b) All material changes to the plan of operation require prior approval of the
401 commissioner.
- 402 (c) The captive insurance company must provide updated financial projections if
403 a proposed material change in the plan of operation will result in a change in the
404 projected net equity of greater than 15 percent when compared to the most recent
405 projections.
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§6.305. Books and Records.

(a) The books and records of a captive insurance company must be located within the United States of America and its territories at all times. The books and records of a captive insurance company must be located within the State of Texas, unless the commissioner authorizes in writing that the books and records may be located outside of the state. A captive insurance company may not locate records outside of the state until after the captive insurance company receives the commissioner's written authorization, and then may only locate those records outside of the state in the manner and to the extent that the commissioner has authorized.

(b) A captive insurance company must request authorization from the commissioner to locate records outside of the state in writing. The written request must:

(1) identify the specific physical address outside the State of Texas where the captive insurance company's books and records will be located;

(2) identify the types of books and records that will be located outside the State of Texas, including those that will be maintained in an electronic format;

(3) if applicable, identify the vendor of a leased or purchased software or electronic platform who will provide services to the captive insurance company related to the maintenance of the captive insurance company's books and records; and

(4) if applicable, include the captive insurance company's continuity plan in the event of cancellation or termination of the arrangement with a vendor identified by the captive insurance company under paragraph (3) of this subsection.

(c) All books and records of a captive insurance company must be:

(1) electronically or physically accessible to the department upon the department's request; and

(2) maintained in a manner that provides an audit trail between the captive insurance company's general ledger and the captive insurance company's source documents.

(d) A captive insurance company's electronic books and records must be maintained with reasonable controls to ensure the integrity, accuracy, and reliability of the electronic storage system and to prevent the deterioration of the electronic books and records.

(e) A captive insurance company must ensure at least a weekly backup of its electronic books and records.

(f) A captive insurance company must be able to access a complete and current set of its electronic books and records or a complete and current backup of its electronic books and records from a location within the State of Texas at all times.

SUBCHAPTER E. FINANCIAL INFORMATION AND REPORTING

§6.401. Annual Report.

(a) The department adopts the Texas Captive Annual Report Form, including all forms, instructions, and requirements by reference. The adopted forms and instructions will be available on the department's website.

(b) On or before March 1 of each year, a captive insurance company must electronically submit its annual report of the captive insurance company's financial

condition as of December 31 of the prior year using the adopted Texas Captive Annual Report Form and instructions, except as provided in subsection (c) of this section.

(c) If the audited financial statements of the ultimate controlling person are not available by March 1, the captive insurance company must submit the audited financial statements to the department within 30 days after the ultimate controlling person's audited financial statements become available.

§6.402. Basis of Accounting. The basis of accounting for the captive insurance company is generally accepted accounting principles. The department requires modifications to generally accepted accounting principles as described in the instructions to the adopted Texas Captive Annual Report Form.

§6.403. Audited Financial Statements. The captive insurance company must file with the department by June 1 of each year, a report of the captive insurance company's financial condition at last year end with a qualified accountant's opinion of the captive insurance company's financial condition, as required in Insurance Code Chapter 401, Subchapter A, and §7.85 and §7.88 of this title (relating to Audited Financial Reports and Independent Audits of Insurer and HMO Financial Statements and Insurer and HMO Internal Control over Financial Reporting).

§6.404. Captive Insurance Companies Using Other Than Calendar Year Fiscal Years.

(a) A captive insurance company may submit a written request to the commissioner for permission to use a fiscal year end other than a calendar year end.

The commissioner may grant the request in writing at the commissioner's sole discretion. A captive insurance company may not use a fiscal year other than a calendar year without the commissioner's written authorization.

(b) For premium tax, a captive insurance company granted a fiscal year end date other than December 31, must submit balance sheet, income statement, and statement of cash flows on or before March 1 of each year for the prior calendar year and in the annual report format established in the Texas Captive Annual Report Form adopted under §6.401 of this title (relating to Annual Report).

(c) Under Insurance Code §964.060(c), a captive insurance company granted a fiscal year end date other than December 31 must:

(1) not later than the 60th day after the captive insurance company's fiscal year end, submit to the department the captive insurance company's annual report for the prior fiscal year using the Texas Captive Annual Report Form and instructions under §6.401, except as provided in subsection (d); and

(2) not later than the 150th day after the date the annual report is due, submit to the department the captive insurance company's audited financial statements as required under §6.403 of this title (relating to Audited Financial Statements).

(d) If the audited financial statements of the ultimate controlling person are not available by the 60th day after the captive insurance company's fiscal year end, the captive insurance company must submit the audited financial statements to the

department within 30 days after the ultimate controlling person's audited financial statements become available.

§6.405. Capital and Surplus Requirements.

(a) Capital and surplus requirements will be determined by the commissioner under Insurance Code §964.056. In addition to the factors listed in Insurance Code §964.056, the commissioner may consider any factor the commissioner deems relevant in making this determination, including:

- (1) net writings to policyholders' surplus ratio of more than 2 to 1;
- (2) net reserves to policyholders' surplus of more than 3 to 1; and
- (3) net retention of an individual loss per occurrence in excess of 10 percent of policyholders' surplus.

(b) A captive insurance company applicant or holder of a certificate of authority with levels in excess of the levels described in subsection (a)(1) – (3) of this section must provide justification for the excess levels.

(c) Following the captive insurance company's submission of the annual report or any material change in the plan of operation, the commissioner may require increased capital and surplus after considering factors in Insurance Code §964.056 and this section.

§6.406. Loans to Affiliates.

(a) If the captive insurance company is not part of an insurance company holding system, the captive insurance company must submit a written request to the

commissioner for prior approval of the loan. The request must be submitted on the Form D under §7.212(a) - (d) of this title (relating to Form D).

(b) Terms of the loan agreement under subsection (a) must:

(1) be fair and equitable;

(2) prohibit advancement of funds by the captive insurance company to the affiliate except as defined in the agreement;

(3) include standards for termination of the agreement with and without cause; and

(4) specify that, if the captive insurance company is placed in receivership or seized by the commissioner under Insurance Code Chapter 443:

(A) all of the rights of the captive insurance company under the agreement extend to the receiver or commissioner; and

(B) all books and records will immediately be made available to the receiver or the commissioner and must be turned over to the receiver or commissioner immediately upon the receiver or the commissioner's request.

(c) If the captive insurance company is part of an insurance holding company system, loans to affiliates are governed by Insurance Code Chapter 823.

§6.407. Letters of Credit. Letters of credit reported as assets by the captive insurance company:

(1) cannot be supported or collateralized by a guaranty of an affiliate; and

(2) must meet the requirements established in §7.610 of this title (relating to Letter of Credit Qualified under the Insurance Code, Article 3.10, §(d)(3), or Article 5.75-1, §(d)(3)).

§6.408. Policyholders' Dividends. A captive insurance company must notify the commissioner of a policyholder dividend within 30 days of issuing the dividend.

SUBCHAPTER F. WORKER'S COMPENSATION

§6.501. Workers' Compensation.

(a) A captive insurance company may not write, issue, or provide any form of workers' compensation insurance coverage to policyholders.

(b) A captive insurance company that issues a reimbursement policy for claims paid under a workers' compensation insurance policy written and issued by an authorized insurance company, may not participate in the adjudication, settlement, or payment of any claims made under that workers' compensation insurance policy.

(c) Claims incurred by a certified self-insured employer may not be paid directly by a captive insurance company, but must continue to be paid by a qualified claims servicing contractor as required in Labor Code §407.061.

(d) The existence of a contractual reimbursement policy issued by a captive insurance company to an affiliate does not alter any statutory requirements related to workers' compensation insurance, including the statutory requirement under Insurance Code §2053.203 that:

(1) the insurance company writing a workers' compensation policy with a negotiated deductible is required to pay all benefits, including those benefits payable, wholly or partly, from the deductible amount; and

(2) the policyholder must make reimbursements to the insurance company writing the workers' compensation policy with a negotiated deductible periodically, rather than at the time claim costs are incurred.

SUBCHAPTER G. TAXES

§6.601. Waiver of Taxes.

(a) A redomesticating foreign or alien captive insurance company may request that the commissioner postpone or waive the imposition of any tax or fee under the Insurance Code for a period not to exceed two tax reporting years from the date of redomestication.

(b) The request must be in writing and submitted to the department with the application.

(c) The request must state and provide support of the benefit that licensing the captive insurance company will have for Texas, including, as applicable, employment of Texas residents, the development of real estate in Texas, economic activity in Texas, and additional taxes that will be paid in Texas.

(d) The commissioner may in writing grant or deny the waiver request in whole or in part in the commissioner's sole discretion, including granting a waiver for all or part of the two year period and all or part of one or more of the following taxes or fees:

(1) the maintenance tax;

584 (2) the premium tax; or

585 (3) licensing fees.

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587 **SUBCHAPTER H. DISCIPLINARY ACTION.**

588 **§6.701. Disciplinary Action.** Disciplinary action may be taken against a captive

589 insurance company, captive insurance manager, or other person if, after notice and

590 opportunity for hearing, it is determined that the captive insurance company, captive

591 insurance manager, or other person has violated the Insurance Code, or other law

592 subject to department enforcement, or regulation by the department, including

593 (1) a captive insurance company that violates §6.501 of this title (relating

594 to Workers' Compensation); and

595 (2) an insurance carrier, as defined by Labor Code §401.011, if it allows

596 an employer, other than a self-insured employer, to dictate the methods by which and

597 the terms on which a claim is handled and settled in violation of statute.